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5 Attorneys for Defendants
KEVIN VU and CAFE BONITA, INC.
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 SINHDARELLA, INC.

No. C 07 04353 WHA

12 vs.

ANSWER OF DEFENDANT
KEVIN VU TO FIRST
13 AMENDED COMPLAINT

14 KEVIN VU, etc., et al.,

15 Defendants.
_____ /

16 Defendant KEVIN VU, ("Defendant") hereby responds to the First
17 Amended Complaint of Plaintiff SINHDARELLA, INC. ("Sinhdarella" or "Plaintiff") as
18 follows:

19 Except as hereinafter expressly admitted, qualified or otherwise
20 admitted, Defendant specifically denies each and every allegation, statement,
21 matter and thing contained in the First Amended Complaint.

22 **Jurisdiction**

23 1. In response to this paragraph of the First Amended Complaint,
24 Defendant is without sufficient knowledge or information to form a belief as to the
25 truth of the allegations in this paragraph, and on that basis denies each and every
26 allegation in this paragraph.

27 **Venue**

28 2. In response to this paragraph of the First Amended Complaint,

Defendant admits that he does business within this district in his capacity as sole officer and director of defendant California corporation CAFE BONITA, INC., but denies the remaining allegations in this paragraph.

Intradistrict Assignment

3. In response to this paragraph of the First Amended Complaint, Defendant admits each and every allegation in this paragraph.

Parties

4. In response to this paragraph of the First Amended Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

5. In response to this paragraph of the First Amended Complaint, Defendant admits that he is an individual who resides in San Jose, California. Defendant denies the remaining allegations in this paragraph.

6. In response to this paragraph of the First Amended Complaint, Defendant admits each and every allegation in this paragraph.

7. In response to this paragraph of the First Amended Complaint, Defendant admits that his counsel informed Plaintiff that Defendant is and has at all times been the owner and operator of the restaurant known as the "BOILING CRAB" located at 393 North Capitol Avenue, San Jose, California (the "San Jose Boiling Crab" Restaurant"). Defendant denies the remaining allegations in this paragraph.

8. In response to this paragraph of the First Amended Complaint, Defendant denies each and every allegation in this paragraph.

9. In response to this paragraph of the First Amended Complaint, Defendant admits that in June 2006 defendant CAFE BONITA, INC., opened the San Jose "Boiling Crab" Restaurant. Defendant denies the remaining allegations in this paragraph.

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10. In response to this paragraph of the First Amended Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

11. In response to this paragraph of the First Amended Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

Factual Allegations

12. In response to this paragraph of the First Amended Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

13. In response to this paragraph of the First Amended Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

14. In response to this paragraph of the First Amended Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

15. In response to this paragraph of the First Amended Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

16. In response to this paragraph of the First Amended Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every

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1 allegation in this paragraph.

2 17. In response to this paragraph of the First Amended Complaint,
3 Defendant is without sufficient knowledge or information to form a belief as to the
4 truth of the allegations in this paragraph, and on that basis denies each and every
5 allegation in this paragraph.

6 18. In response to this paragraph of the First Amended Complaint,
7 Defendant is without sufficient knowledge or information to form a belief as to the
8 truth of the allegations in this paragraph, and on that basis denies each and every
9 allegation in this paragraph.

10 19. In response to this paragraph of the First Amended Complaint,
11 Defendant is without sufficient knowledge or information to form a belief as to the
12 truth of the allegations in this paragraph, and on that basis denies each and every
13 allegation in this paragraph.

14 **Allegations of Federal Registration**

15 20. In response to this paragraph of the First Amended Complaint,
16 Defendant is without sufficient knowledge or information to form a belief as to the
17 truth of the allegations in this paragraph, and on that basis denies each and every
18 allegation in this paragraph.

19 21. In response to this paragraph of the First Amended Complaint,
20 Defendant is without sufficient knowledge or information to form a belief as to the
21 truth of the allegations in this paragraph, and on that basis denies each and every
22 allegation in this paragraph.

23 **Infringement Allegations**

24 22. In response to this paragraph of the First Amended Complaint,
25 Defendant denies each and every allegation in this paragraph.

26 23. In response to this paragraph of the First Amended Complaint,
27 Defendant denies each and every allegation in this paragraph.

28 24. In response to this paragraph of the First Amended Complaint,

1 Defendant denies each and every allegation in this paragraph.

2 25. In response to this paragraph of the First Amended Complaint,
3 Defendant denies each and every allegation in this paragraph.

4 26. In response to this paragraph of the First Amended Complaint,
5 Defendant denies each and every allegation in this paragraph.

6 27. In response to this paragraph of the First Amended Complaint,
7 Defendant denies each and every allegation in this paragraph.

8 **Allegations Regarding Demands to Stop**

9 28. In response to this paragraph of the First Amended Complaint,
10 Defendant is without sufficient knowledge or information to form a belief as to the
11 truth of the allegations in this paragraph, and on that basis denies each and every
12 allegation in this paragraph.

13 29. In response to this paragraph of the First Amended Complaint,
14 Defendant is without sufficient knowledge or information to form a belief as to the
15 truth of the allegations in this paragraph, and on that basis denies each and every
16 allegation in this paragraph.

17 30. In response to this paragraph of the First Amended Complaint,
18 Defendant is without sufficient knowledge or information to form a belief as to the
19 truth of the allegations in this paragraph, and on that basis denies each and every
20 allegation in this paragraph.

21 31. In response to this paragraph of the First Amended Complaint,
22 Defendant is without sufficient knowledge or information to form a belief as to the
23 truth of the allegations in this paragraph, and on that basis denies each and every
24 allegation in this paragraph.

25 **First Claim for Relief**

26 32. In response to this paragraph of the First Amended Complaint,
27 Defendant incorporates by reference his responses to the allegations of
28 paragraphs 1 through 31, inclusive of the First Amended Complaint.

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1 33. In response to this paragraph of the First Amended Complaint,
2 Defendant is without sufficient knowledge or information to form a belief as to the
3 truth of the allegations in this paragraph, and on that basis denies each and every
4 allegation in this paragraph.

5 34. In response to this paragraph of the First Amended Complaint,
6 Defendant denies each and every allegation in this paragraph.

7 35. In response to this paragraph of the First Amended Complaint,
8 Defendant is without sufficient knowledge or information to form a belief as to the
9 truth of whether Sinhdarella consented to or authorized Defendant's adoption or
10 commercial use of the trademark and on that basis denies this allegation.
11 Defendant denies the remaining allegations in this paragraph.

12 36. In response to this paragraph of the First Amended Complaint,
13 Defendant denies each and every allegation in this paragraph.

14 37. In response to this paragraph of the First Amended Complaint,
15 Defendant denies each and every allegation in this paragraph.

16 38. In response to this paragraph of the First Amended Complaint,
17 Defendant denies each and every allegation in this paragraph.

18 39. In response to this paragraph of the First Amended Complaint,
19 Defendant denies each and every allegation in this paragraph.

20 40. In response to this paragraph of the First Amended Complaint,
21 Defendant denies each and every allegation in this paragraph.

22 41. In response to this paragraph of the First Amended Complaint,
23 Defendant denies each and every allegation in this paragraph.

24 **Second Claim for Relief**

25 42. In response to this paragraph of the First Amended Complaint,
26 Defendant incorporates by reference his responses to the allegations of
27 paragraphs 1 through 41, inclusive of the First Amended Complaint.

28 43. In response to this paragraph of the First Amended Complaint,

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1 Defendant is without sufficient knowledge or information to form a belief as to the
2 truth of the allegations in this paragraph, and on that basis denies each and every
3 allegation in this paragraph.

4 44. In response to this paragraph of the First Amended Complaint,
5 Defendant is without sufficient knowledge or information to form a belief as to the
6 truth of the allegations in this paragraph, and on that basis denies each and every
7 allegation in this paragraph.

8 45. In response to this paragraph of the First Amended Complaint,
9 Defendant denies each and every allegation in this paragraph.

10 46. In response to this paragraph of the First Amended Complaint,
11 Defendant denies each and every allegation in this paragraph.

12 47. In response to this paragraph of the First Amended Complaint,
13 Defendant denies each and every allegation in this paragraph.

14 48. In response to this paragraph of the First Amended Complaint,
15 Defendant denies each and every allegation in this paragraph.

16 49. In response to this paragraph of the First Amended Complaint,
17 Defendant denies each and every allegation in this paragraph.

18 50. In response to this paragraph of the First Amended Complaint,
19 Defendant denies each and every allegation in this paragraph.

20 **Third Claim for Relief**

21 51. In response to this paragraph of the First Amended Complaint,
22 Defendant incorporates by reference his responses to the allegations of
23 paragraphs 1 through 50, inclusive of the First Amended Complaint.

24 52. In response to this paragraph of the First Amended Complaint,
25 Defendant denies each and every allegation in this paragraph.

26 53. In response to this paragraph of the First Amended Complaint,
27 Defendant denies each and every allegation in this paragraph.

28 54. In response to this paragraph of the First Amended Complaint,

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1 Defendant denies each and every allegation in this paragraph.

2 **Fourth Claim for Relief**

3 55. In response to this paragraph of the First Amended Complaint,
4 Defendant incorporates by reference his responses to the allegations of
5 paragraphs 1 through 54, inclusive of the First Amended Complaint.

6 56. In response to this paragraph of the First Amended Complaint,
7 Defendant denies each and every allegation in this paragraph.

8 57. In response to this paragraph of the First Amended Complaint,
9 Defendant denies each and every allegation in this paragraph.

10 **Fifth Claim for Relief**

11 58. In response to this paragraph of the First Amended Complaint,
12 Defendant incorporates by reference his responses to the allegations of
13 paragraphs 1 through 57, inclusive of the First Amended Complaint.

14 59. In response to this paragraph of the First Amended Complaint,
15 Defendant denies each and every allegation in this paragraph.

16 60. In response to this paragraph of the First Amended Complaint,
17 Defendant denies each and every allegation in this paragraph.

18 61. In response to this paragraph of the First Amended Complaint,
19 Defendant denies each and every allegation in this paragraph.

20 **AFFIRMATIVE DEFENSES**

21 Defendant asserts the following affirmative defenses based on his
22 current knowledge and information and in order to avoid waiver. Defendant
23 reserves the right to withdraw any of these affirmative defenses to assert further
24 affirmative defenses as information becomes available.

25 **FIRST AFFIRMATIVE DEFENSE**

26 Plaintiff's First Amended Complaint fails to state a claim upon which
27 relief may be granted.

28 / / / /

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims for infringement are barred because the registration is invalid and unenforceable.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's alleged mark is merely descriptive of the goods and not entitled to trademark protection.

FOURTH AFFIRMATIVE DEFENSE

All or part of plaintiff's claims fail to state a cause of action because the purported marks have not acquired distinctiveness (secondary meaning) and/or are not inherently distinctive.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claim for trademark infringement and Lanham Act violations are barred because the allegedly infringing words were not used as a trademark, but fairly and in good faith to describe a product, and Plaintiff is not entitled to appropriate a generic or descriptive term for its exclusive use.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Plaintiff cannot demonstrate any likelihood that the public will be confused or misled as to the source of Defendant's goods or that Defendant's goods are produced by, or endorsed by, Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff, through its failure to protect or enforce their trademark rights, has abandoned all such rights.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of fair use.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because the purported trade dress does not qualify for protection.

/ / / /

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because any alleged infringement was innocent and wholly without knowledge by Defendant of any rights claimed by Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Any and all of the acts alleged by Plaintiff were performed, if they were performed at all, with lack of knowledge, lack of willful intent and without malice or ill-will.

TWELFTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's claims are barred because Plaintiff has not suffered any damages as a result of the facts alleged in the First Amended Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant alleges it did not infringe any trademark and Defendant's conduct, if any, was not intended to, was not used to, and did not, in fact, cause confusion, mistake, or deceit.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's common law and state law claims are preempted by Federal law.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statutes of limitation.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred or its recovery must be reduced for failure to mitigate damages, if any.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of estoppel.

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NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of acquiescence.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of waiver.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff takes nothing by reason of its First Amended Complaint;
2. That judgment be rendered in favor of Defendant;
3. That Defendant be awarded attorneys fees and costs incurred in defense of this action as provided by any and all applicable laws and statutes; and
4. For such other relief as the Court deems just and proper.

DEFENDANT DEMANDS TRIAL BY JURY ON ALL ISSUES.

Dated: 5 February 2008.

Respectfully Submitted
Law Offices of Christopher Hays

By 
Christopher Hays
Attorneys for Defendant KEVIN VU

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ONE EMBARCADERO CENTER, SUITE 500
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PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed by Law Offices Of Christopher Hays in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is One Embarcadero Center, Suite 500, San Francisco, California 94111.

On 5 February 2008 I served the foregoing document(s) described as ANSWER OF DEFENDANT KEVIN VU TO FIRST AMENDED COMPLAINT on the interested parties in this action as stated on the attached service list as follows:

- X By placing true copies thereof enclosed in sealed envelope(s) addressed as stated on the attached service list
- ☐ BY PERSONAL SERVICE
I delivered such envelope(s) by hand to the offices of the addressee(s).
- X BY MAIL
I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice such envelope(s) would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ BY OVERNIGHT MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing via _____. Under that practice such envelope(s) would be deposited at an authorized _____ location on that same day with delivery fees fully provided for at San Francisco, California, in the ordinary course of business.
- X BY E-MAIL:
On 5 February 2008, at approximately 4:45 pm, I served the above stated document(s) by e-mail directed to the parties as indicated of the attached service list.

Executed on 5 February 2008 at San Francisco, California.

- X (FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.



Christopher Hays

ATTACHED SERVICE LIST

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